

Memorandum

To: Licensed and Register Family Child Care Providers
From: Janet McLaughlin, Deputy Commissioner, DCF Child Development Division
Date: 09/24/2024
Re: Child Care Licensing Rule Changes for Family Child Care Homes (FCCH)

In November 2023, the Department of Health and Human Services, Administration for Children and Families, Office of Child Care (OCC) conducted a monitoring visit to determine Vermont's compliance with federal Child Care and Development Fund requirements. In April 2024, the Vermont Department for Children and Families, Child Development Division (CDD) agreed to an Implementation Plan with OCC to bring Vermont's child care licensing requirements into compliance with federal law, 45 C.F.R. Part 98.

This Memorandum modifies the Licensing Regulations for Registered and Licensed Family Child Care Homes ("Rules"), which will be formally amended when the Rules are revised through the rulemaking process next year. In the meantime, the following Rules will be modified, as described below, pursuant to the legal authority cited in this Memorandum. These changes shall go into effect on October 1, 2024, and shall remain in effect until the rulemaking process is completed in 2025.

Effective date: 10/01/2024

Impacted Licensing Rules:

1. FCCH 2.3 – Licensing Process and Procedures
2. FCCH 3.6 – Emergency Preparedness
3. FCCH 5.1 – Child Health Promotion and Protection
4. FCCH 7.4 – Annual Professional Development



Explanation of Changes

New Site Visit Report Practice – CDD Will Post Pre-Registration Reports Online

Federal law requires CDD to post the results of monitoring and inspection reports on a website that is easily accessible to the public. See 45 C.F.R. § 98.33(a)(4). Additionally, CDD is required to encourage the development of a comprehensive child care services system and facilitate the development of child care facilities. See 33 V.S.A. § 3501(1), (2). CDD already posts site visit reports online to the BFIS public portal for licensed and registered providers. From now on, CDD will also post all pre-registration site visit reports to the BFIS public portal.

Clarification of Rule 2.3.1.2 – Annual Inspections

State law permits CDD to inspect the premises of a person who is licensed or registered by CDD or a person applying for a license or registration. See 33 V.S.A. § 151(2), (4). Rules 2.3.1.1 and 2.3.1.2 require FCCPs and prospective FCCPs to permit CDD to inspect their home, records, and property to ensure compliance with the Rules. Federal law requires at least one unannounced annual inspection of child care providers to ensure compliance with health, safety, and fire standards. See 45 C.F.R. § 98.42(b)(2)(i)(B). Accordingly, CDD is adding the following sentence to Rule 2.3.1.2: “The Division shall conduct an unannounced licensing visit at least once every 365 days at each FCCH.”

Modification of Rule 3.6.1.1 – Additional Emergency Planning Requirements

Rule 3.6.1.1 requires FCCPs to have an emergency response plan that addresses several circumstances and provides procedures for evacuations, notifications, and accounting for children, among other things. The rule also requires FCCPs to have in their emergency response plan a system for notifying the parents of an emergency. In addition to these requirements, federal law also requires child care providers to have emergency response plans addressing reunification of children with their families. See 45 C.F.R. § 98.41(a)(1)(vii). Under Rule 2.3.10.5, FCCPs must comply with all applicable state and federal laws even if they are more stringent than CDD’s licensing rules. Therefore, Rule 3.6.1.1 is modified, and an additional bullet point is added to the rule that will now require FCCPs’ emergency response plans to have: “A process for reunifying children with their families in the event of an emergency.”

Modification of Rule 5.1.3 – Immunization Grace Period for Certain Children

Federal and state law, as well as Rule 5.1.3, require children to be age-appropriately immunized to receive child care services. See 45 C.F.R. § 98.41(a)(1)(i)(A); 18 V.S.A. § 1121(b). However, federal law also requires a grace period that allows children experiencing homelessness and children in foster care additional time to receive necessary immunizations. See 45 C.F.R. § 98.41(a)(1)(i)(C). Rule 2.7.1 allows CDD’s



Deputy Commissioner to issue a variance to a rule when literal application of a rule will result in unnecessary hardship for an FCCP or for a child and family, and the intent of the rule can be achieved through other means. The Deputy Commissioner has determined that literal application of Rule 5.1.3 will cause unnecessary hardship to all FCCPs as well as children experiencing homelessness and children in foster care. Therefore, CDD is modifying Rule 5.1.3 to allow a grace period to provide proof of immunization for children experiencing homelessness and children in foster care. An additional bullet point will now be added to Rule 5.1.3, stating: “The FCCP shall allow a grace period of no more than six months for any child experiencing homelessness or any child in foster care to provide a record or certificate of immunization, issued by a licensed health care practitioner or a health clinic, showing that the child has received required immunizations appropriate to the child’s age, as specified by the Department of Health.”

Modification of Rule 7.4.4 – Training Requirements for Substitutes

Federal law requires child care providers, including caregivers, teachers and directors, to receive ongoing professional development and health and safety training. See 45 C.F.R. § 98.44(b)(2)(i). Unlike CDD’s licensing rules, federal law does not distinguish between regular staff and substitutes. Nevertheless, “substitutes” are “staff” under Rules 2.2.47 and 2.2.48, and substitutes must comply with all rules that staff are required to follow, unless substitutes are specifically exempted. Rule 7.4.1 requires all staff, including substitutes, to have an Individual Professional Development Plan (IPDP), “and staff shall be actively engaged in professional development activities as specified in their IPDP.” See Rule 7.4.2. Moreover, while Rule 7.4.4 exempts substitutes from the 15 hours of annual professional development activities required of other staff, this rule is not intended to exempt substitutes from complying with any other training requirement. As mentioned above, FCCPs must comply with federal laws even if they are more stringent than CDD’s licensing rules. See Rule 2.3.10.5. Therefore, to comply with federal law, CDD is now imposing a minimum number of hours of annual professional development on substitutes under Rule 7.4.4: “Substitutes shall complete four (4) hours of annual professional development activities in addition to any requirements for infant/child CPR certification (or recertification) and first aid training.”

Child Care Licensing Rule Changes (as incorporated within FCCH rules. Strikethrough language removed, and additional language highlighted.)

FCCH Section 2 – General Provisions

2.3 Licensing Process and Procedures

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2.3.1 Annual Licensing Requirements



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2.3.1.2 The prospective FCCP, FCCP, or FCCH staff shall permit visits, inspections and examination of the FCCH, its records, equipment and materials relevant to determining compliance with applicable provisions of these rules at reasonable hours by representatives of the Division. Any records or reports required in these regulations must be surrendered to a Division representative on request. The Division representative shall make a reasonable effort to announce their presence and shall identify themselves prior to entering the FCCH. The prospective FCCP, FCCP, or FCCH staff may request the representative produce valid identification. **The Division shall conduct an unannounced licensing visit at least once every 365 days at each FCCH.**

FCCH Section 3 – Administration and Operation

3.6 Emergency Preparedness

3.6.1 Emergency Planning

3.6.1.1 The FCCP shall develop and maintain a written Emergency Response Plan to respond to a full range of emergencies both natural and man-made. A complete plan shall include how the FCCP will address and manage the following situations and responsibilities:

- Evacuations or other emergencies such as leaving the premises and lockdown situations;
- Specific concerns related to the location of the program, such as proximity to a nuclear reactor, an area prone to flooding or power loss;
- Notifying the local authorities of the emergency;
- A system for notifying the parents of the emergency;
- Notifying the local emergency planning committee regarding the location of the FCCH and using the committee as a resource in emergency planning for the program;
- A system of identifying the children and staff present at the time of the emergency and maintaining knowledge of their whereabouts;
- A system for handling infants, toddlers, and children with special needs;
- An established evacuation meeting location within walking distance of the FCCH;
- A system to account for all children and staff at evacuation meeting place;
- A process for relocation if necessary including safe transportation;
- A system for sheltering in place if the FCCP and children present need to remain in the FCCH for an extended period; and
- Staff chain of command and individual staff roles and responsibilities, (if applicable) during emergencies; and
- **A process for reunifying children with their families in the event of an emergency.**



FCCH Section 5 – Health, Safety and Nutrition

5.1 Child Health Promotion and Protection

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5.1.3 Immunizations:

The FCCP shall maintain documentation in the child’s file of each child’s current immunization status.

- Immunization records shall include the immunization administered and the date of each immunization. The immunization record should be updated after each additional immunization has been received.
- If an enrolled child is in the process of complying with immunization requirements in accordance with the Vermont recommended immunization schedule, documentation in the child’s file shall include the required Vermont Department of Health form.
- If a child has not had a required immunization due to a Vermont allowed exemption, documentation in the child’s file shall include the required Vermont Department of Health form.
- The FCCP shall allow a grace period of no more than six months for any child experiencing homelessness or any child in foster care to provide a record or certificate of immunization, issued by a licensed health care practitioner or a health clinic, showing that the child has received required immunizations appropriate to the child’s age, as specified by the Department of Health.

FCCH Section 7 – Program Personnel/Staffing

7.4 Annual Professional Development

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7.4.4 All staff, with the exception of substitutes, shall complete fifteen (15) clock hours of annual professional development activities as required in the rule 7.4.2 of these regulations. Substitutes shall complete four (4) hours of annual professional development activities in addition to any requirements for infant/child CPR certification (or recertification) and first aid training.

